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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,740	06/13/2002	Detlef Hollenberg	H 3170 PCT/US	8626

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EXAMINER

POWERS, FIONA

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/031,740	HOLLENBERG ET AL.	
	Examiner	Art Unit	
	Fiona T. Powers	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13 and 23-30 is/are rejected.
- 7) ☒ Claim(s) 14-22, 31 and 32 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1/7/02</u> | 6) <input type="checkbox"/> Other: _____ |

Receipt is acknowledged of the preliminary amendments filed January 7, 2002 and June 13, 2002 and the disclosure statement filed January 7, 2002, which have been entered in the file.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13 and 23 to 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Shepherdson et al. (US 1898693) or Kalischer et al. (US 1957599), cited.

The references disclose the claimed hybrid dyes of the formula (I) and compositions comprising them wherein X is a group derived from a substantive dye which is a derivative of anthraquinone, S is a direct bond and Y is a group derived from a primary intermediate oxidation dye precursor which is p-phenylenediamine or a derivative thereof or is a group derived from a secondary intermediate oxidation dye precursor which is 1,3-diaminobenzene or a derivative of naphthalene. Note Examples 1 to 4 of Shepherdson et al. and Examples 1, 3 and 5 of Kalischer et al.

Art Unit: 1626

Claims 13 and 23 to 30 are rejected under 35 U.S.C. 102(b) as being anticipated by McNally et al. (US 2311065), cited.

The reference discloses the claimed hybrid dyes of the formula (I) and compositions comprising them wherein X is a group derived from a substantive dye which is a derivative of anthraquinone, S is a spacer group which is an alkylene group having 2 carbons and Y is a group derived from a primary intermediate oxidation dye precursor which is p-phenylenediamine or a derivative thereof. Note Examples 1, 4 and 16 (1-amino-4-(-NH-C₂H₄-NHC₆H₄NH₂)-anthraquinone).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 13 and 23 to 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Shepherdson et al. (US 1898693) or Kalischer et al. (US 1957599).

Determination of the scope and content of the prior art (MPEP §2141.01)

Shepherdson et al. disclose a process for the preparation of anthraquinone dyes wherein phenylenediamines are condensed

Art Unit: 1626

with halogenated anthraquinones. Kalischer et al. disclose 1-amino-2-sulfo-4-aminophenylamino-anthraquinones which are used for the dyeing of wool.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The compounds of the reference differ from the claimed compounds in that they are position isomers, homologs or close structural analogs of the compounds disclosed by the reference.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2413)

The claimed compounds which are position isomers, homologs or close structural analogs of the compounds disclosed by the reference would have been rendered obvious. For example, compounds like those of the references but where one or both of the hydrogens of the NH₂ group are replaced by a methyl group. One of ordinary skill in the art would have been motivated to make the claimed compounds with the expectation that additional compounds useful as dyes would be obtained.

Claims 13 and 23 to 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNally et al. (US 2311065).

Determination of the scope and content of the prior art (MPEP §2141.01)

McNally et al. disclose amino anthraquinones which are useful as dyestuffs for coloring celluloses esters, silk and wool.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The compounds of the reference differ from those claimed in that they are homologs of the claimed dyes. For example, the spacer group represented by S in the present invention is ethylene in the compounds of the reference instead of methylene or propylene.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2413)

It has been found that homologous compounds are obvious over one another. Due to their close structural similarity one of ordinary skill in the art would have been motivated to make the claimed dyes with the expectation that dyes with similar properties would be obtained.

Claims 14 to 22, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The references made of record and not relied upon show the state of the art. Reference BT on PTO-1449 has been crossed out because a legible copy of the reference was not provided as required by 37 CFR 1.98.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fiona T.

Application/Control Number: 10/031,740
Art Unit: 1626

Page 6

Powers whose telephone number is 703-308-4535. The examiner can normally be reached on Monday - Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 703-308-4537. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Fiona T. Powers
Fiona T. Powers
Primary Examiner
Art Unit 1626

ftp
September 21, 2003